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9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) No. CR 99-1094-FMC
 12) CV 08-4132-FMC
 Plaintiff,)
 13) GOVERNMENT'S RESPONSE TO COURT'S
 v.) AUGUST 19, 2008 ORDER FOR
 14) ADDITIONAL BRIEFING RE DEFENDANT'S
) § 2255 MOTION
 15 JOHN EDWARDS,)
) [No hearing set]
 16 Defendant.)
 17 _____)

18 In its August 19, 2008 order, the Court ordered that the
 19 government brief defendant's claim that the offenses of which he
 20 was convicted occurred in 1989 and 1990, but the statute which
 21 provided for the applicable one-year time bar in respect of
 22 defendant's motion was not effective until 1996. The issue was
 23 framed as implicating the Ex Post Facto Clause.

24 The government respectfully submits that there is no Ex Post
 25 Facto issue. The Ex Post Facto Clause forbids Congress to enact
 26 any law "which imposes a punishment for an act which was not
 27 punishable at the time it was committed; or imposes additional
 28 punishment to that then prescribed." Weaver v. Graham, 450 U.S.

1 24, 28 (1981) (citation omitted, footnote omitted). The applicable
2 statute, 28 U.S.C. § 2255, in respect of the one-year time bar,
3 does not impose any punishment.

4 Moreover, it was effective before defendant was charged in
5 1999. It is irrelevant that defendant's criminal conduct may have
6 occurred prior to the effective date of the applicable statute
7 because the statute only deals with relief from convictions or
8 sentences once adjudged final, not offense conduct. See e.g.,
9 § 2255(1) ("A 1-year period of limitation shall apply to a motion
10 under this section. The limitation period shall run from the
11 latest of – (1) the date on which the judgment of conviction
12 becomes final . . .").

13 Accordingly, it is irrelevant that defendant's offenses for
14 which he was convicted and sentenced after the effective date of
15 the applicable statute may have occurred prior to the date of the
16 statute's enactment (or amendment).

17 Thus, based on the foregoing and upon the government's motion
18 to dismiss, defendant's motion should be dismissed.

19
20 DATED: September 18, 2008

Respectfully submitted,

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23 CHRISTINE C. EWELL
24 Assistant United States Attorney
Chief, Criminal Division

25 /S/
26 MARK AVEIS
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27 Attorneys for Plaintiff
28 UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I, **YOLANDA AGUAYO**, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of the United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and I am not a party to the above--entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of United States District Court for the Central District of California, at whose discretion I served a copy of: GOVERNMENT'S RESPONSE TO COURT'S AUGUST 19, 2008 ORDER FOR ADDITIONAL BRIEFING RE DEFENDANT'S § 2255 MOTION

Service was:

☐ Placed in a closed envelope, for collection and interoffice delivery addressed as follows:
Mail, addressed

☒ Placed in a sealed envelope for collection and mailing via United States

as follows:

☐ By hand delivery addressed as follows:

☐ By facsimile as follows:

☐ By messenger as follows:

☐ By federal express as follows:

JOHN EDWARDS
P.O. BOX 260464
ENCINO, CA 91426

This Certificate is executed on September 17, 2008, Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.


YOLANDA AGUAYO